

Minutes of the Meeting of the
Arizona Game and Fish Commission
Friday, December 7, 2001 – 8:00 a.m.
Saturday, December 8, 2001 – 8:00 a.m.
Wildlife Building – State Fairgrounds
McDowell Road & 17th Avenue
Phoenix, AZ

PRESENT: (Commission)

(Director's Staff)

Chairman Dennis D. Manning
Commissioner Michael M Golightly
Commissioner Joe Carter
Commissioner Sue Chilton
Commissioner W. Hays Gilstrap

Director Duane L. Shroufe
Deputy Director Steve K. Ferrell
Asst. A.G. Jay R. Adkins
Asst. A.G. Jim Odenkirk

Chairman Manning called the meeting to order at 8:05 a.m.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION.

Vote: Unanimous

Upon advice from legal counsel, the Chairman immediately noted the Commission was out of executive session and back into public session. Mr. Odenkirk stated that with ongoing changes in interpretations of the open meeting law, the Attorney General's office has given direction regarding executive sessions on litigation. Progress or recent status of litigation discussions should occur within public session. Legal advice, strategy or direction from the Commission to legal counsel on a matter should be reserved for executive session. The reason for the split was that litigation was a matter of public concern and interest. The report would be brief.

1. Litigation Report

- a. *Forest Guardians v. APHIS*, CIV 99-61-TUC-WDB; *State of Arizona v. Norton*, CIV 98-0632-PHX-ROS; *Conservation Force v. Shroufe*, CIV 98-0239 PHX RCB; *In Re General Stream Adjudication for the Little Colorado River and Gila River*; *Mark Boge v. Arizona Game and Fish Commission & Shroufe*, CIV 2000-020754 and *Mary R. LLC, et al. v. Arizona Game and Fish Commission*, CIV 2001-015313 and *Defenders of Wildlife et al. v. United States Fish and Wildlife Service*, CIV01-934 (HA) (U.S.D.C. Ore.)

Mr. Odenkirk reported on the status of *State of Arizona v. Norton* (burro litigation). In September, the Commission authorized the Attorney General's Office to proceed with a new round of litigation. Mr. Odenkirk prepared the necessary documents to proceed with filing a complaint and the documents were under review in the Attorney General's office. When that process is done, he would return to the Commission in January to review the litigation documents so the Commission could better understand where the case was going and what some of the issues were. The complaint should be ready to file after January 1, 2002.

Regarding ongoing adjudication matters, Mr. Odenkirk stated there was nothing to report regarding litigation. The settlement process has been stalled because of problems between the Zunis and Salt River Project. On the Gila side, the Department has been working to come to some agreement regarding Game and Fish water rights, but as to the larger settlement, Mr. Odenkirk did not know of any progress that had been made to come to a comprehensive settlement that would allow for Congress to act on legislation. He thought that so long as conflicts remained between the Gila community and the water users in the Safford valley, Congress would not proceed with legislation to authorize the settlement agreement.

Regarding *Mary R. LLC, et al. v. Arizona Game and Fish Commission* (Page Springs litigation), Mr. Odenkirk stated that an answer and a counter claim to the complaint were filed in early November. The plaintiffs will file an answer to our counter claim by next week. It was hoped there would be an opportunity to negotiate with the plaintiffs. Other than that, the next step would be to proceed towards the disclosure and discovery phase in the litigation in which both sides would have to disclose all the material and relevant information in their files associated with the hatchery and the use of water. Expert witnesses would be engaged in doing discovery in the form of depositions and requests of documents from both sides. This process could take six months.

Mr. Adkins reported on *Forest Guardians vs. APHIS*, which is now on appeal in the 9th Circuit Court of Appeals, involves the suit to enjoin the killing of all native wildlife in wilderness areas in national forests in Arizona. The Attorney General's office intervened on behalf of two state agencies (Game and Fish Commission and the Department of Agriculture) in order to try to protect the interests of the agencies regarding the scope of possible relief that might be entered by the court. We intervened on behalf of the federal defendant (U.S. Fish and Wildlife Service). The Service was successful in the district court but the decision was appealed to the 9th Circuit. The case has been briefed but there has been no notification of when oral arguments will occur (probably in spring 2002).

Regarding *Conservation Force v. Shroufe* (10% nonresident limitation on the North Kaibab on deer and bull elk hunts), Mr. Adkins argued that case yesterday in the 9th Circuit Court of Appeals in San Francisco. The court was concerned about significant issues on both sides of the case. The case was won in the district court. The case is now under advisement and it was uncertain when there would be a decision.

Mr. Adkins stated the Department is not yet involved in *Defenders of Wildlife et al. v. United States Fish and Wildlife Service*, but Director Shroufe asked him to look into it. The Defenders of Wildlife (DOW) filed the case in the U.S. District Court in Oregon. It is a suit against the U.S. Fish and Wildlife Service (FWS) regarding the passage of regulations to open the take of peregrine falcons for falconry. In large part the decision was based on data collected by the Arizona Game and Fish Department. The season to take peregrine falcons in Arizona was based on the FWS decision. The DOW has sued to enjoin the FWS that decision, alleging that the data was insufficient, outdated and inadequate to support the decision to reopen the season for take. Mr. Adkins wanted to discuss this case further in executive session.

Commissioner Gilstrap stated he has a problem with the new format as it puts a significant amount of responsibility on legal counsel and the Commission while discussing these items. The Commission might ask a question or inadvertently make a statement that might jeopardize a case. He is not comfortable with the potential problems this might create. Mr. Adkins responded it is the thinking of the Attorney General's office that matters of litigation are of public interest and this type of format must be employed. He stressed being careful in addressing this item so as to not jeopardize the lawsuits.

Commissioner Gilstrap asked about preparation of a brief written summary for review that could cover this item. Mr. Adkins stated that is a possibility; the written report will be available to the public at the meeting. He will look into the suggestion.

* * * * *

Meeting recessed 8:20 a.m.

Meeting reconvened 8:25 a.m.

* * * * *

2. Executive Session

- a. Legal Counsel. *Forest Guardians v. APHIS*, CIV 99-61-TUC-WDB; *State of Arizona v. Norton*, CIV 98-0632-PHX-ROS; *Conservation Force v. Shroufe*, CIV 98-0239 PHX RCB; *In Re General Stream Adjudication for the Little Colorado River and Gila River*; *Center for Biological Diversity v. Dombek et al*, CIV00-1711-PHX-RCB; *Mark Boge v. Arizona Game and Fish Commission & Shroufe*, CIV 2000-020754 and *Mary R. LLC, et al. v. Arizona Game and Fish Commission*, CIV 2001-015313 and *Defenders of Wildlife et al. v. United States Fish and Wildlife Service*, CIV01-934 (HA) (U.S.D.C. Ore.)
- b. Personnel matters. Director's goals and objectives.

Motion: Gilstrap moved and Chilton seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION.

Vote: Unanimous

* * * * *

Meeting recessed 8:25 a.m.

Meeting reconvened 9:03 a.m.

* * * * *

Chairman Manning called the meeting to order at 9:03 a.m. Members of the Commission and Director's staff were introduced. The meeting followed an agenda dated November 9, 2001.

* * * * *

5. Request for Commission Approval of a Memorandum of Understanding (MOU) Between the Commission and The Nature Conservancy (TNC) for the Purposes of Establishing a Framework for Collaboration in the Management of Lands of Mutual Interest to Both Parties

Presenter: John Kennedy

Mr. Kennedy noted Patrick Graham (State Director) and Laura Hubbard (Protection Program Manager) were present from The Nature Conservancy (TNC), Arizona Chapter.

The Department and TNC have worked cooperatively to develop a MOU for the purposes of establishing a framework for collaboration between the Commission and TNC in the management of lands of mutual interest to both parties. The MOU establishes a framework that would guide collaborative management, where feasible, in support of both organizations' goals and objectives.

Motion: Chilton moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE A MOU BETWEEN THE COMMISSION AND TNC FOR THE PURPOSES OF ESTABLISHING A FRAMEWORK FOR COLLABORATION IN THE MANAGEMENT OF LANDS OF MUTUAL INTEREST TO BOTH PARTIES AND AUTHORIZE THE DIRECTOR TO EXECUTE THE MOU AS ATTACHED OR AS APPROVED BY THE OFFICE OF THE ATTORNEY GENERAL.

Chairman Manning requested an explanation of restoration of biological diversity. Mr. Kennedy stated the Department was looking at areas in Arizona where natural processes can be restored. Mr. Graham stated it was about maintaining habitat to allow biodiversity to exist.

Commissioner Gilstrap asked if there would be language in the purchase and sale wherein habitat and hunt opportunities would be maintained in the San Rafael valley. Mr. Graham stated there would be no sales that would prevent hunting opportunities. Easements are narrow in addressing development. This issue would have to be further investigated. With regard to the Sharp Ranch, Mr. Graham noted it was in the ownership of a private landowner so it was up to the private landowner to make a decision about access on his private property.

Vote: Unanimous

* * * * *

Director Shroufe presented a life membership to the International Association of Fish and Wildlife Agencies to Mr. Graham.

* * * * *

3. Request for the Commission to Approve the Acquisition of the Enders Property, Apache County, Arizona

Presenter: John Kennedy, Habitat Branch Chief

The proposed acquisition of the Enders property, consisting of approximately 296 acres of land in the Springerville area, includes approximately 3/4 mile of the Little Colorado River. The property is located along the southern and western boundaries of the Becker Lake Wildlife Area and approximately two miles upstream of the Wenima Riparian Corridor. Purchase price is approximately \$1.6 million.

Acquisition of the Enders property would provide for Commission ownership of approximately 20 acres of 3rd priority water rights and 43 acres of 5th priority water rights under the Norviel Decree, providing opportunities to enhance water management for the benefit of sensitive species on the property, as well as on the Becker Lake Wildlife Area and the Wenima Riparian Corridor.

With respect to the value of the water rights, a Norviel Decree water right with a 10th priority or better is reliable and should have water available every year. According to the Water Master, 3rd and 5th priority water rights have received water every year including drought years.

The property can be accessed from the west via the Becker Lake Road and from the east via State Route 60.

Due to water rights that would be provided to the Commission under the Norviel Decree, acquisition of the property would provide opportunities to enhance water management for the benefit of sensitive species on the property, as well as the Becker Lake Wildlife Area and the Wenima Riparian Corridor. Maintaining and increasing water flows to the Little Colorado River would contribute to the overall health of the watershed and provide opportunities to conserve sensitive fish and wildlife species that depend on aquatic and riparian habitats.

The Enders property supports riparian, wet meadow, and grassland habitats. Threatened and endangered species documented as occurring on the Enders property include bald eagle, Little Colorado spinedace and mountain plover. The property contains approximately ¾ mile of high-value aquatic and riparian habitats associated with the Little Colorado River and approximately ¾ mile of the Becker Lake Ditch. Habitat improvement projects focused on enhancing riparian habitat on the property could benefit the endangered Southwestern willow flycatcher.

The Department coordinated with and received support from the Town of Springerville and Apache County.

Issues associated with deeds were noted. During the survey, three small areas adjacent to the property were identified as clouded with overlapping deeds describing the same areas. The sellers and affected parties have prepared and exchanged Quitclaim Deeds to resolve two of the minor overlapping issues. It is expected these deeds will be filed before close of escrow. The remaining overlap consists of less than .1 acre and the title company is in the process of resolving this deed overlap issue. If any of the clouded areas are not resolved prior to close of escrow, it will not be included in the lands to be acquired by the Commission. If they are not resolved and not part of the acquisition, the Department's position with respect to the acquisition would remain the same (the overall values associated with the acquisition are not dependent upon those small clouded areas). Based on discussions with the sellers, if these small parcels are excluded from the sale at this time (one may be), opportunities exist for the Commission to accept these parcels from the Enders.

There is one boundary issue consisting of one acre that remains unresolved. However, because it would be of value to include this one acre site into the wildlife area in the

future if approved by the Commission, the Department provided more information on this area. The area is located in the lower southwestern portion of the Enders property (southern end of parcel 3). This area is not described in the Enders' deed. The Enders have always believed this parcel belonged to them and have been farming this parcel without contention by anyone. Additional time is needed for the Enders to gather evidence to resolve this problem in the near future. The parcel would be included into the wildlife area as a whole and would be of value to the Commission. In the event the sellers resolve this issue and propose to transfer the one acre site to the Commission (perhaps without cost), it may be in the Commission's best interest to consider the parcel in the Department's recommendation today as well.

The Department is not proposing acquisition of any clouded areas by the Commission; however, if authorized by the Commission, opportunities exist to accept parcels that are excluded from sale because of issues that have not yet been resolved. Once the sellers resolve the issues, the acceptance of these parcels could occur through transfer from the Enders to the Commission.

The Enders were present at today's meeting.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE ACQUISITION OF THE ENDERS PROPERTY, APACHE COUNTY, ARIZONA, CONSISTENT WITH THE PURCHASE AGREEMENT OR AS RECOMMENDED BY THE OFFICE OF THE ATTORNEY GENERAL.

Commissioner Carter asked if land values in Apache County were increasing significantly because the Commission was buying property in the area. Mr. Kennedy stated no. Mr. Odenkirk stated there have been other sales in the region that have had as much impact on the increased value of the properties as would be attributed to the properties the Commission purchased in the past. The Commission needed to be careful that its acquisitions were not setting the market value higher than they should be. The Department was cautious in the appraisal process to insure the appraisers appropriately value water rights and land so as to not over inflate the values in relation to other properties in the region. The Commission's acquisitions in the past have not been the source of increased value overall of property in the region.

Commissioner Carter asked about the vulnerability of water rights associated with the acquisition to Native American water rights claim settlements, specifically the proposals for Zuni settlements. Mr. Odenkirk stated he could not talk about details of the settlement negotiations involving the Zuni in a public meeting. Generally, the water rights are subject to the claims made by the Zuni, Navajo and Hopi. The Navajo and Hopi claims are less of a concern. The Zuni have made claim to water rights in order to support their historical religious use of water in the Zion Reservoir region of the Little Colorado River. The Zuni have expressed aboriginal rights to that water that would date back prior to any existing use of the water. Aboriginal claims are strong; the amount of water claimed would be limited and would not be a threat to all of the water supply that was used within the Norviel Decree area. Each water user would be minimally impacted by that claim. Mr. Odenkirk believed the claim would likely be resolved through some kind of settlement with the Zuni.

Commissioner Carter stated water rights were a critical component of the Commission's needs for acquiring this property. He was concerned about the potential impacts of specifically settling with the Zuni on these and other water rights. He called for an executive session to discuss the potential impacts of this acquisition.

Motion: Carter moved and Chilton seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION.

Before the Commission voted to go into Executive Session, Mr. Odenkirk stated there was a general purpose associated with the water rights for the Enders property, which was to help restore the riparian area (Little Colorado River) that had been affected by diverting water out of the stream. The intent would be to return the water back to the stream to add additional flow to the Little Colorado River as it passes through the property. Given that the Zuni, Navajo and Hopi are all downstream of the Enders property, if there was a situation where a court determined that the tribes were entitled to an amount of water and they had a better/higher priority to the water than other users around Springerville, the impact to the Department's use of that water would be minimal because the water would be passing through the property and would be going downstream to a senior priority user. If the use of the water continued to be for irrigation purposes or for reservoir purposes, there would be greater concern for the impact a tribal claim would have on the water rights. He thought it was appropriate to go into executive session.

Vote: Unanimous

* * * * *

Meeting recessed 9:40 a.m.

Meeting reconvened 9:55 a.m.

* * * * *

Commissioner Carter noted during the last Heritage audit regarding use of Heritage funds, emphasis was placed on the issue as to whether or not endangered or threatened species had been identified on the properties. He asked if the Department had specific documentation related to the threatened or endangered species identified in the summary and if there was any substantiation or validation by the U.S. Fish and Wildlife Service, would the Department be prepared to address those items in the next audit. Mr. Kennedy stated the Department did have documentation regarding bald eagle nesting at Becker Lake. With respect to the bald eagle, acquiring these properties to add to its habitat near Becker Lake would provide long-term protection. With respect to the Little Colorado River spinedace, the Department does have documentation on the presence of that species in the Little Colorado River, which is addressed in the recovery plan for that species. There is potential habitat for the mountain plover and the species has occurred in that habitat in the past.

Richard Remington, Region I (Pinetop) Supervisor, stated the Department made a cursory survey on the Enders property. The survey did not find Little Colorado spinedace on the property; however, the spinedace occurs immediately above and below the property. With respect to the Southwestern willow flycatcher, that portion of the Little Colorado River is considered as potential habitat. Bald eagles are present on the Enders property. No surveys have been conducted for mountain plovers.

Mr. Kennedy explained that FWS documentation supports potential habitat for the Southwestern willow flycatcher as well as the mountain plover and bald eagle. Recovery of the Little Colorado River spinedace is identified in the FWS's recovery plan.

Vote: Carter, Chilton and Gilstrap – Aye

Golightly – Nay

Chair voted Aye

Motion passed 4 to 1

* * * * *

10. Statewide Shooting Range Project Update

Presenter: Kerry Baldwin

The Department was recently contacted about a new potential shooting range opportunity in the southwestern Phoenix metropolitan area. The Department feels the project offers potential and deserves to be looked at. Discussions have occurred with the key players.

Mary Rose Willcox, Maricopa County Supervisor, provided initial comments. In attendance with her were representatives from Maricopa County: Bill VanArsdale (Deputy Director of Maricopa County Parks and Police Chief of Maricopa County Park Police) and Captain Woodward (Maricopa County Sheriff's Office).

Maricopa County Parks, Maricopa County Sheriff's Department, and an Arizona private company (the Del Webb Group of Pulte Homes) have been working together on regional shooting range issues. They have worked cooperatively to find a proper western Maricopa County regional shooting range for both law enforcement officers and the general public. A proposed shooting range complex has been identified that would be located within the Buckeye Hills Regional Park. This land meets several key criteria the County has set:

1. Neighborhood compatibility
2. Permanent barriers exist on all four sides to shield it from residential encroachment
3. Extensive programming, cost and design work have been done that meet NRA standards for shooting ranges and comply with Maricopa County's construction codes
4. Land is available; the land is granted to Maricopa County under the Public Purposes and Recreational Act from the Bureau of Land Management (the site is totally compatible with BLM's proposed uses and BLM supports the concept of regional shooting ranges)

Ms. Willcox asked the Commission to join them in partnership regarding this site. She stated the following would occur if there was a partnership of all parties: a first-class regional public shooting range can be built; a first-class law enforcement range that would assist the public range in offering youth-gun safety and hunter education classes as well as other educational gun safety programs would exist and infrastructures could be brought to the site that would also assist park activities. Maricopa County was currently drilling a well that would provide water to the site. The County Board of Supervisors

was also committed to working with Game and Fish to assure the site was constructed to proper standards. The County was committed to conduct proper and active maintenance of the facility and the County would charge and collect fees from both the public and law enforcement ranges, which would go towards County operation and maintenance of the site. The Del Webb Group has voluntarily pledged \$500,000 in funds to assist in the development of the shooting range. The Group also donated \$100,000 towards design, cost estimating, programming, land research and infrastructure construction research to this effort. She hoped the Commission would endorse and support Department staff to continue to work in partnership with the County on this project. Additional information could be presented at a future Commission meeting, including a cooperative partnership, availability of federal funds, schedule and a potential inter-governmental agreement.

Mr. Baldwin noted previous shooting range facility commitments would not be supplanted by this opportunity.

Commissioner Golightly asked why the possibility of expanding the use of Ben Avery Shooting Facility was not being looked into rather than competing with ourselves on an economic package that could result in an economic deficiency at Ben Avery in the future. Mr. Baldwin stated at this time the proposal was for a multi-agency partnership. The range itself would consist of two components: a law enforcement training facility and a public shooting range. It would not be designed to be a mirror of Ben Avery, especially in the area of competitive shooting elements. It would be a public shooting venue more similar to Usery Pass Range. From a long-term perspective, the Department saw the need for the Valley to be anchored with four fairly large-sized shooting facilities. (Ben Avery in the northwest; this proposed site in the southwest; Usery Pass in the northeast and a facility was still needed in the southeast.) Ben Avery would not be able to handle all of the shooter days for general recreational shooters in the future.

Motion: Carter moved and Chilton seconded THAT THE COMMISSION DIRECT THE DEPARTMENT TO CONTINUE TO BE A PARTICIPANT IN THIS PROCESS, BUT NOT TO BE THE LEAD AGENCY, AND THAT THE COMMISSION BE KEPT APPRISED OF THE DEVELOPMENT OF THE CONCEPTUAL IDEA IN ORDER TO MAKE A DETERMINATION AT A LATER DATE AS TO WHAT OUR ROLE MAY OR MAY NOT BE.

Vote: Unanimous

* * * * *

4. An Update on Current Issues, Planning Efforts, and Proposed Projects on Federal Lands in Arizona and Other Matters Related Thereto

Presenter: John Kennedy, Habitat Branch Chief

A copy of the update, which was provided to the Commission prior to today's meeting, is included as part of these minutes.

Clarification was provided on several issues in the update. The first was on page 3, under Safford and Tucson Field Offices, regarding the proposed native fish translocation in

Martinez Canyon. This project area includes the LEN allotment, not the Mineral Mountain allotment. The permittee is John Fowler. On page 4, under the U.S. Fish and Wildlife Service (FWS), in response to the Department's work with the FWS regional office to resolve issues and concerns associated with developing management plans on refuges in Arizona, the Regional Director is now proposing development of a MOU to enhance our collaborative efforts and define specific protocols to lead us toward resolution of issues and to be able to elevate issues to the Director's level and to the Regional Director's level in a more expeditious manner and to lead to the accomplishment of both agencies' wildlife conservation goals and objectives. The Department clearly supports this. Under the Buenos Aires National Wildlife Refuge on page 4, in response to a recent Department letter to the Regional Director regarding the delay in the development of the Comprehensive Conservation Plan for the refuge, a letter was received from the Regional Director on Monday. The FWS was committed to reinitiating that planning process in the near future and will involve the Department as a full member on the team.

Mr. Kennedy noted a productive meeting occurred with the FWS's Washington, D.C. Refuge staff in Kansas last week. The state wildlife agencies (with Arizona leading the states), along with the International, developed specific language describing the states' roles in the management of refuges and necessary coordination between the FWS and state wildlife agencies. The language that was developed and completed in Kansas will be included in all of the preambles of the policies and in a FWS Director's Order.

Regarding the Heber-Reno and Morgan Mountain Sheep Driveways, a letter dated November 26 to Chairman Manning was received from the Regional Forester in response to a Commission letter dated September 25. The Regional Forester explained that the NEPA team was established last September and there would be a scoping team meeting later this month. The Forest would involve the Department as a full member on the team.

Regarding the November 26 letter, Commissioner Golightly asked why the Forest Service identified a representative instead of working with Mr. Kennedy to identify who he wanted on the team. Mr. Kennedy stated it was his intention to attend or have his staff member attend those team meetings since it was multi-regional. The Forest Service letter explained they have been coordinating with the Habitat Program Manager in Region 6. Mr. Kennedy will contact the Forest Service to clarify participation on the ID team. Commissioner Golightly suggested drafting a letter for the Chairman's signature to clarify that the Commission asked Mr. Kennedy to appoint someone to the ID team.

Mr. Kennedy gave an update on the Mount Graham red squirrel issue. Aerial surveys have been completed and analysis of the information should be available in January. Due to warm weather conditions, the Coronado National Forest did not expect a significant decrease in the infestation, and expected that the warm weather may have exacerbated the infestation. The Forest Service is continuing with the experimental pheromone work in the spruce-fir forest in order to gather information for future use. The Forest has completed a plan that proposes to use pheromone treatments in the Douglas fir forest sometime in late winter-early spring to prevent infestation by the bark beetle. The Forest has removed beetle-infected trees around campgrounds and other high value sites. The Forest is thinning trees along the Swift Trail to provide fuel breaks. Based on information

from the FWS, it is anticipated the recovery team will reconvene within the next month or two.

Commissioner Gilstrap noted two weeks ago there was a news release regarding the decreases in the number of the Mount Graham red squirrel. The news release did not mention damage caused by the spruce beetle. He thought the Department should be more sensitive in its news releases so that the public gets all the information. Director Shroufe noted the Commission's decision was to report numbers only and not causes and effects. Mr. Kennedy noted the Department could report back to the Commission regarding the red squirrel team's activities pertinent to priorities and habitat issues. He asked for a written summary of the comments made today on the Mount Graham issue.

Commissioner Chilton asked that strong support be expressed for Fish and Wildlife Service and Forest Service efforts to reduce the infestation problem and to take every step possible to reduce the fire hazard while keeping the habitat issue in mind. Mr. Kennedy stated he would express her comments to the other Department work units that were involved in the recovery issue.

Commissioner Carter noted that about two years ago Congress appropriated monies to deal with wild fires in the West. He asked if this was an area where there might be an opportunity for a collaborative demonstration project between the state and federal agencies utilizing those funds for that purpose. Director Shroufe stated since the amount of money came down to the states through the Regional Forester, the State Land Department and the Governor's Office are coordinating the issue. Mr. Kennedy sits on the technical committee that decides where the money goes. The quickest way to implement that was to address the urban-rural interface first and that is where the majority of the money was being spent at the present time. From a state perspective, the human risk factor is the greatest. It was important to get the recovery team going so that there can be recommendations to do something in the area. Mr. Shroufe stated the FWS was a bigger player in the endangered species issue, whereas other areas that did not have endangered species problems, only a simple consultation needed to be done. Issues were changing fast on Mount Graham and they needed to be addressed.

Commissioner Carter asked that appreciation be expressed to Region 5 personnel involved in obtaining access to the Rattlesnake Mesa Road in the Galiuros. He referenced the BLM Lake Havasu Field Office update and asked for a summary of the burro management herd objectives in terms in numbers in each herd; if burros were over the estimated populations, the summary to the Commission should include BLM's plan to reduce the herds and timelines.

Public comment

Joe Melton, representing the Yuma Valley Rod and Gun Club, stated he attended a Partners meeting of the Barry Goldwater Executive Committee. At that meeting, it was noted the eastern portion of the Camino Diablo Road going into the Cabeza Prieta National Wildlife Area was closed and will be closed until there was rain. Part of the reason for the closure came about because of the large volume of drug traffic and illegal aliens going through area.

There was also an animal rights' lawsuit for biological opinions to recover the Sonoran pronghorn. The west part of the road would be closed from May through July. There would be access by the mountains near Ajo. There were critical issues coming in the future. The Inter-agency Management Team will be taking over the Partners meetings; the military has taken over the range management of the resources and BLM is no longer involved. He did not understand the reason for the road closure since there would be military overflights in the same area that would have the same or more impact on the antelope than driving on the road.

* * * * *

6. Request for the Commission to Approve a Cooperative Agreement with Private Landowners for the Purpose of Coordinating Access on Private Property to Repair and Maintain the Ditch Associated with the Cluff Ranch Wildlife Area, Graham County, Arizona

Presenter: John Kennedy, Habitat Branch Chief

The ditch from Ash Creek to Pond 1 at the Cluff Ranch Wildlife Area has been in need of repair for several years. The ditch is located on both private property and Commission-owned lands. Although the Department has an easement to access the ditch, the private landowners whose property adjoins the boundaries of the wildlife area requested development of an agreement to address access to repair those portions of the ditch that cross their properties. The Cooperative Agreement provides a framework for coordination between private landowners and the Commission regarding access on private property to repair and maintain this ditch.

The Department determined that this Cooperative Agreement would expedite necessary maintenance of the ditch and promote partnerships that are of direct benefit to the Commission and the landowners in the area. Implementing the terms and conditions of the Cooperative Agreement is also in the public interest and consistent and compatible with the Cluff Ranch Wildlife Area Management Plan.

A map of the area was distributed to the Commission.

Motion: Chilton moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE A COOPERATIVE AGREEMENT WITH PRIVATE LANDOWNERS FOR THE PURPOSE OF COORDINATING ACCESS ON PRIVATE PROPERTY TO REPAIR AND MAINTAIN THE DITCH ASSOCIATED WITH THE CLUFF RANCH WILDLIFE AREA, GRAHAM COUNTY, ARIZONA, AND EXECUTE THE AGREEMENT AS ATTACHED OR AS APPROVED BY THE OFFICE OF THE ATTORNEY GENERAL.

Vote: Unanimous

* * * * *

11. Ben Avery Shooting Facility Development Plan

Presenter: Kerry Baldwin, Education Branch Chief

The Department received documents from L. B. Chief requesting permission to increase the base fee structure for the Ben Avery Shooting Facility Clay Target Center. The following area specific fee increase proposals:

<u>Current Fee Structure</u>	<u>Proposed Fee Structure</u>	<u>% Increase</u>
TRAP		
Members \$ 4.00	\$ 4.50	12.5
Non members \$ 5.00	\$ 5.50	10.0
SKEET		
Members \$ 4.00	\$ 4.50	12.5
Non members \$ 5.00	\$ 5.50	10.0
SPORTING CLAYS		
50 Targets		
Members \$13.00	\$15.50	19.0
Non members \$18.00	\$20.50	14.0
SPORTING CLAYS		
100 Targets		
Members \$25.00	\$30.00	20.0
Non members \$35.00	\$40.00	14.0
5 STAND		
Members \$ 5.00	\$ 5.50	10.0
Non members \$ 6.00	\$ 6.50	8.0
MEMBERSHIP FEES		
Patron Member	\$50.00	
CAMPING FEES		
Electric \$5.00/night	\$8.00/night	60.0
No Service \$5.00/night	No Change	0.0

The current fee structure has been in place for six years. The contractor has had to accommodate numerous increases at the cost of doing business over the last six years. According to documents provided by the contractor, costs of labor have gone up over 17%. The cost of targets has gone up over 5% and fuel costs have gone up over 17%. Overall, costs have increased more than 6% over the past three years alone. The contractor feels that the increases are necessary for the BASF Clay Target Center to continue to operate as one of the finest facilities in the country.

Because there are very few facilities in Arizona of equal size and use patterns to compare market price ranges, Department staff has looked at prices in neighboring states and similar facilities. The data indicates that the increases requested are not unreasonable. The new fee structure would continue to put the facility in the mid-range for prices charged, and for the amenities and services provided, the price increases appear to be very reasonable.

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE THE BEN AVERY SHOOTING FACILITY CLAY TARGET CENTER FEE INCREASES AS PROPOSED.

Vote: Unanimous

* * * * *

7. Request for Commission Approval of an Entry Agreement with the Arizona Department of Transportation (ADOT) and to Convey 2.94 Acres of Commission-owned Land at the Robbins Butte Wildlife Area to ADOT for the Bridge at the State Route 85 Crossing of the Gila River, Maricopa County, Arizona

Presenter: John Kennedy, Habitat Branch Chief

A new Entry Agreement is necessary to ensure ADOT's continued legal authority to occupy Robbins Butte Wildlife Area and maintain the bridge at the State Route 85 crossing of the Gila River, Maricopa County, from January 4, 1999 through the execution of the Quitclaim Deed. The Quitclaim Deed that will convey the 2.94 acre right-of-way located on the Commission's deeded parcel cannot be issued until completion of the approved mitigation plan by ADOT, which has now been completed.

The Entry Agreement requires ADOT to pay rental fees on the 2.94 acres until the Quitclaim Deed is executed. The Entry Agreement also requires payment of market value for ADOT's purchase of the 2.94-acre parcel when the Quitclaim Deed is executed. The U.S. Fish and Wildlife Service's Federal Aid Office has reviewed and approved the mitigation plan and the proposed rental and sale of the deeded parcel. Purchase fees received from ADOT associated with the sale of the 2.94 acres would be returned to the Federal Aid Program FW-20-D as program income. As determined by Federal Aid, rental fees associated with the Entry Agreement must be returned as license revenue to the Game and Fish Fund. A current appraisal is being conducted by ADOT at this time to determine the market value and to calculate the rental fees. Rental fees will be calculated at 10% of the market value.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE AN ENTRY AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION AND TO APPROVE THE CONVEYANCE OF 2.94 ACRES OF COMMISSION-OWNED LAND AT ROBBINS BUTTE WILDLIFE AREA TO THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE BRIDGE AT STATE ROUTE 85 CROSSING OF THE GILA RIVER, MARICOPA COUNTY, ARIZONA, AND AUTHORIZE THE DIRECTOR TO EXECUTE THE AGREEMENT AS ATTACHED OR AS APPROVED BY THE OFFICE OF THE ATTORNEY GENERAL.

Vote: Unanimous

* * * * *

Meeting recessed 11:00 a.m.

Meeting reconvened 11:22 a.m.

* * * * *

8. State and Federal Legislation

Presenter: Duane L. Shroufe, Director

Director Shroufe noted he would be the agency's lobbyist until a replacement was found for Richard Stephenson.

Director Shroufe stated as of yesterday at 1:30 p.m., the Senate Appropriation Committee's version of the budget contained no Heritage and no SLIF. The House's version contained no Heritage but a one-time hit in 2002 of \$5 million on SLIF monies. The Legislature will have to reach agreement on those two issues.

An update on the federal appropriations process and what the President signed in the budget was contained in the quarterly report of the Director's goals. The Conservation and Reinvestment Act did not get finalized this year but the amount of monies appropriated to state fish and wildlife agencies through the Department of Interior and U.S. Fish and Wildlife Service seems to be growing as a year-to-year appropriation but not at the rate that is needed to build a needed infrastructure.

* * * * *

9. Call to the Public

There were no comments.

* * * * *

10. Statewide Shooting Range Project Update – cont'd.

Presenter: Kerry Baldwin

Written updates were provided to the Commission on various issues in the program prior to today's meeting.

Elements identified involved Bellemont, the strategic plan process and the status of the interagency task force.

Mr. Baldwin stated a variety of issues were being worked on concerning Bellemont. A letter received from Congressman Hayworth has stimulated some reaction to various shooting range issues at the Washington, D.C. level.

Mr. Baldwin stated the Department took the lead in forming an interagency task force with the Bureau of Land Management and the Tonto National Forest to take a look at the urban lands-wild lands interface issues related to recreational shooting. A meeting occurred yesterday. There have been two public open houses in November to collect information about their wants in using public lands for recreational shooting. The Task Force wanted to look at shooting ranges from a more holistic perspective. The Tonto Forest Supervisor was committed to going back into closed areas to identify potential informal recreational shooting sites. This was a major development. Mr. Baldwin talked with the U.S. Forest Service's Washington, D.C. office and felt there was a gap in the D.C. office perspective and some local Forest perspectives. The D.C. office needed to let

the Forest supervisor know he was on the right track and was modeling situations that have occurred in other states and other regions of the Forest Service. In January, a meeting will be held with the U.S. Forest Service, BLM, and constituent groups who have familiarity with the sites, to establish basic criteria to rule out some of the potential sites. This approach may help to look at the metropolitan area in a broader context. Maricopa County will be asked to be a player on the Task Force because of the Buckeye Hills potential. The State Land Department was also asked to be on the Task Force but declined.

The Commission has expressed an interest in looking at shooting ranges strategically. A working draft was prepared of a strategic plan. This plan would be presented to the Commission at the January meeting. If the state was looked at holistically, critical elements needed to be considered for shooting ranges. Working assumptions would be provided in the strategic plan that would become the framework from which shooting range issues would be analyzed. These will help set the standards of determining priorities on shooting ranges in the state.

Population centers and existing ranges were looked at in Arizona. Mr. Baldwin demonstrated the findings on a map for the Commission. Major gaps occur in the Flagstaff-Williams area, Sedona and parts of the Verde Valley, and Nogales. The White Mountain area does not have a full service shooting facility. When setting priorities, a gap around Willcox may not have as high a priority as Flagstaff because the population serviced in that particular area is much smaller. Focus may be on a full service range in the Flagstaff area and an informal range in the Willcox area that would not have a full set of facilities but would provide a facility for people to go and shoot. Once the Commission has the framework, initial working recommendations would be provided in terms of the strategic process.

The Douglas Rod and Gun Club will cease operations at the end of the month as they have an existing agreement with the military that is coming up and there does not appear to be a renewal resolution. A meeting will be held next Thursday with the Army National Guard, the Douglas representatives, and Game and Fish to try to come up with a solution.

Regarding the Tri-State Range, BLM wanted more detail from the Department about our proposal for a range. The site could be moved a few miles, which would put the range into another BLM district that has less potential conflicts. The BLM is making that determination.

The shooting range in Pima County is moving forward. Regarding a shooting range in Show Low, interested parties were looking at sites based on criteria the Department provided. The big issue is finding an available site that would meet the needs of the community.

Commissioner Golightly wanted the state and federal delegations to have access to the newspaper article written by David Wolfe. He noted the article stated most environmental assessments for shooting ranges take 6-9 months, followed by construction time by 6-9 months in the East pursuant to Forest Service policy. He wanted to direct the Department to pursue legislation to facilitate shooting ranges on the Coronado and Coconino National Forests.

Director Shroufe thought this was a good time for the congressional delegation to support a bill to transfer Forest Service lands to the Game and Fish Commission. There has been an indication in Agriculture Secretary Venneman's office that they would not oppose such a move. The Office of Management and Budget may have a problem. The worse that could come out of the bill if it passed is that the Commission would have to pay equal value, and that is where we are at right now. Personal contacts could be made with the delegation for support and to find someone to introduce it; it could be a rider on a current bill. The Governor's Office would be contacted for support. The National Rifle Association would support and would be an active player since they want to find resolution for the Tucson range. The Tucson site has a lot of controversy behind it; a site in northwest Tucson would be a better option if available. The Department should pursue these two shooting range sites at this time.

Motion: Carter moved and Chilton seconded THAT THE COMMISSION DIRECT THE DEPARTMENT TO SEEK CONGRESSIONAL LEGISLATION TO PROVIDE FOREST SERVICE LANDS IN COCONINO AND PIMA COUNTIES FOR THE PURPOSE OF SHOOTING RANGE FACILITIES.

Vote: Unanimous

Commissioner Golightly stated that Coconino Forest Supervisor Jim Golden provided him with a history of the Bellemont land exchange from their perspective. He asked the Department to analyze what they had done and respond as soon as possible. Director Shroufe agreed that the Department should respond and delays and new steps would be noted.

Mr. Kennedy gave a report on the appraisal status. The appraisal is moving forward assuming there is water on the land. The Department will insure that the appraisers will stay on the time frame. Mr. Baldwin stated there has been a mining claim on the northeast corner of the property; part of that claim would be in the land exchange area. The claim has never been worked; it was one that was seen as a process element. Because the claim is under a different agency's jurisdiction, the Forest Service has to go through the process of negating that claim. It probably would be found in Department files that the Forest Service said the claim had no mineral value; it was filed for cinders and never developed.

* * * * *

12. Ben Avery Shooting Facility Highest and Best Use Study

Presenter: Kerry Baldwin, Education Branch Chief

(For additional background information, see minutes for the February 23, 2001 Commission meeting, pages 16-17.)

The Shooting Range Economic Development Committee, established in February 2001, has met several times to explore revenue generating opportunities associated with Department-owned shooting ranges. In its work on the Ben Avery Shooting Facility (BASF), the committee determined that a detailed study of the site was necessary to guide future discussions.

Several developers and governmental agencies recommended that a Highest and Best Use Study be done for the site. The study would be done by a state contractor and would provide a comprehensive overview of current and future marketability of lands associated with the BASF. Included would be the following:

1. Regional and City Analysis: Government; Economy; Employment and Supportive community services and facilities
2. Neighborhood Analysis: Infrastructure
3. Population and Population Growth: Age composition; Households; Income levels and buying power; Births, deaths, migration and in-migration
4. Real Estate Trends: Single-family residential; Multi-family residential; Commercial/retail; Office; Industrial
5. Site Analysis: Size; Dimensions and shape; Elevation; Topography; Vegetation; View; Drainage; Flood zone; Utilities; Access; Easements; Adverse or beneficial influences
6. General Plan and Zoning
7. Taxation
8. Demand in the Various Market Segments: Demand; Supply; Competition; Vacancy; Absorption; Pricing; Forecasts
9. Highest and Best Use: Physically possible; Legally possible; Financially feasible; Maximally productive
10. Development Costs
11. Availability of Financing
12. Conclusions

The cost of a Highest and Best Use Study has been determined to be approximately \$25,000. A study could be completed in about 60 days.

Funding for the study could come from unallocated and carry forward balances of State Shooting Range Grant funds. The economic development of the BASF lands are currently projected to only be used to support shooting range efforts on a statewide basis. In April 2001, the Commission approved \$38,975 FY 02 State Shooting Range Grants. This left a balance of \$61,025. The Commission was asked on November 14 to allocate \$39,500 for a contract appraisal of Forest Service lands associated with the proposed Bellemont Shooting Range.

In the initial \$38,975 grant awards made by the Commission, \$30,000 was for the Department to build ADA restrooms and other enhancements at the 7 Mile Range near Kingman. Since the date of the award, the Department received additional WCRP federal monies that included funds to support ADA shooting range issues in Arizona. The Commission approved \$50,000 for these activities at its June 2001 meeting. Consequently, the original State Shooting Range dollars would be available to be utilized for the Highest and Best Use Study.

If the Commission so directs the Department, the final balance of the unallocated FY 02 State Shooting Range Grant funds would be \$26,525.

Commissioner Gilstrap asked if the Commission should restrict itself to just the unused lands under the highest and best use concept. Commissioner Golightly stated there might

be a situation where part of the range was being used, but there might be a shifting of uses that might be the highest and best use. The whole range should be looked at in the analysis only. Director Shroufe stated this is not a matter of identifying needs for shooting sports and hunters to site in rifles; it was a need that has been always been there. It will take time and money to do all the things we started.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE USE OF UP TO \$25,000 OF STATE SHOOTING RANGE GRANT DOLLARS FOR A HIGHEST AND BEST USE STUDY AT THE BEN AVERY SHOOTING FACILITY.

Vote: Unanimous

* * * * *

13. Request to Transfer Funds from the Game and Fish Fund to the Federal Revolving Fund in Order to Meet Pittman-Robertson/Dingell-Johnson Matching Fund Requirements for Fiscal Year 2001

Presenter: Alan Silverberg, Funds and Planning Manager

The Department has seen an increase an amount of Federal Aid Dingell-Johnson funds allocated to the state during the past several years, which as resulted in a significant increase in the carry-forward balance of this program. If cash reserves become too large, the Department may be required to revert funds to Federal Aid; therefore, Dingell-Johnson funds were obligated in a sufficient amount to avoid reversion.

The Department received an appropriation in the amount of \$2,208,000 in FY 2001 from the Game and Fish Fund to be used as state match for Federal Aid Pittman-Robertson/Dingell-Johnson apportioned funds. It has been determined this amount is sufficient to meet the matching requirements of the Pittman-Robertson/Dingell-Johnson Acts in FY 2001; therefore, the Department will need to transfer \$364,241 from the Game and Fish Fund to the Federal Revolving Fund. According to Title 17-405 B., if the appropriated match monies are insufficient, the Commission may transfer from the Game and Fish Fund such sum as deemed advisable to further match the apportionments.

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED TRANSFER OF FUNDS IN THE AMOUNT OF \$364,241 FROM THE GAME AND FISH FUND TO THE FEDERAL REVOLVING FUND TO MEET FISCAL YEAR 2001 PITTMAN-ROBERTSON/DINGELL-JOHNSON MATCHING FUNDS REQUIREMENTS.

Vote: Unanimous

* * * * *

15. Project Narrative for Statewide Law Enforcement Activities

Presenter: Leonard Ordway, Law Enforcement Branch Chief

The Project Narrative described the need, objectives, expected results and benefits, approaches (along with strategic plan linkages), performance measures, location and estimated cost for the Law Enforcement Project for fiscal years 2002 through 2008.

Motion: Chilton moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE THE PROJECT NARRATIVE GOVERNING THE DEPARTMENT'S STATEWIDE LAW ENFORCEMENT ACTIVITIES.

Vote: Unanimous

* * * * *

16. Heritage Public Advisory Committee Recommendations

Presenter: Steve Ferrell, Deputy Director

At its August 17, 2001 meeting, the Heritage Public Advisory Committee (HPAC) voted in favor of forwarding two recommendations to the Commission for consideration.

The first recommended that the Commission support the Auditor General's findings in regards to the performance audit of the Heritage Fund and the Department's commitment to implementing the audit recommendations. The second recommended that the Commission continue to support the Mexican wolf project at current or enhanced levels depending on the availability of funds.

Specific language of the recommendations follows:

Heritage Audit:

The Committee recommends that the Arizona Game and Fish Commission ensure that the Department follows through on its stated commitment to implement recommendations provided by the Arizona Auditor General to improve the Department's administration of the Heritage Fund. The Committee is particularly supportive of the enhanced public process that would be brought to bear on the administration of the Fund by the Department's proposed use of administrative rule and Commission policy. Further, the Department shall update the sensitive species list.

Mexican Wolf Project:

The committee recommends that the Arizona Game and Fish Commission vigorously support the Department's role in the Mexican wolf reintroduction program and ensure that subject to overall availability of Heritage funds, the funding be sustained at, or in greater percentage, as currently supported.

The HPC recommendation regarding the Heritage audit is consistent with the Department's intentions as stated in its response to the Audit Report. The consideration of the wolf project may be premature inasmuch as the report of the project's three-year evaluation and potential for proposed program changes has not yet been completed by the U.S. Fish and Wildlife Service.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO ACCEPT THE HERITAGE PUBLIC ADVISORY COMMITTEE'S RECOMMENDATION REGARDING THE PERFORMANCE AUDIT OF THE HERITAGE FUND, BUT DEFER CONSIDERATION OF THE COMMITTEE'S RECOMMENDATION REGARDING THE WOLF PROJECT UNTIL SUCH TIME THAT THE U.S. FISH AND WILDLIFE SERVICE PUBLISHES THE FINDINGS AND RECOMMENDATIONS OF THE PROJECT'S THREE-YEAR EVALUATION IN THE FEDERAL REGISTER.

Vote: Carter, Chilton and Gilstrap – Aye
Golightly – Absent for Vote
Chair voted Aye
Motion passed

* * * * *

20. Approval of Minutes

Motion: Carter moved and Gilstrap seconded THAT THE MINUTES FOR OCTOBER 19-20, 2001 BE APPROVED.

Vote: Unanimous

The minutes for August 21, 2001 and September 6-8, 2001 were signed.

* * * * *

21. Director's and Chairman's Reports

Chairman Manning gave no report.

Director Shroufe noted the Division briefings were already distributed to the Commission. He attended a BEC meeting and a meeting of the Arizona Heritage Alliance to address the issue of Heritage funds.

Director Shroufe noted at the International Association of Fish and Wildlife Agencies (IAFWA) meeting in Wichita, meetings were held with various entities to move forward on Commission issues, e.g., policies on refuges and the ability to have an effect on those policies before they are finalized. The BLM would be asked to insure Interim Standards and Guidelines for Management in Wilderness Areas are a top priority and those guidelines be revised from 1995 to the guidelines agreed upon by BLM and game and fish agencies through public hearings nationwide. Work is ongoing by the IAFWA with the Forest Service and BLM on the wildlife management MOU to insure there does not need to be changes.

Director Shroufe asked Leonard Ordway, Law Enforcement Branch Chief, to tell the Commission of his latest appointment. Mr. Ordway was elected President of the National Association of Conservation Law Enforcement Chiefs for a two-year term.

* * * * *

22. Commissioners' Reports

Commissioner Chilton attended a meeting of the Altar Valley Conservation Alliance and worked on the Sonoran Desert Conservation Plan and attended a meeting of the Sonoran Desert Conservation Plan Steering Committee. She attended a meeting with Maria Baier of the Governor's Office regarding the Western Governors' position on black-tailed prairie dogs. She participated on the telephone conference call on November 14. She attended meetings with the Forest Service and chaired the November meeting of the Sportsman/Landowner-Lessee Relations Committee.

Commissioner Carter worked on state budget issues with the Arizona Heritage Alliance; i.e., SLIF funds and Heritage Fund.

Commissioner Golightly worked on Bellemont shooting range issues. He was involved in water issues north of the Colorado River and spoke with the Director about investigating responsibilities for maintaining water on the Strip area

Commissioner Gilstrap worked on budget issues and attended the rainbow trout introduction into Tempe Town Lake.

* * * * *

Meeting recessed 12:35 p.m.

Meeting reconvened 1:30 p.m.

* * * * *

14. Hearings on License Revocations for Violation of Game and Fish Codes and Civil Assessments for the Illegal Taking and/or Possession of Wildlife

Presenter: Leonard Ordway, Law Enforcement Branch Chief

Record of these proceedings is maintained in a separate minutes book in the Director's Office.

* * * * *

17. Appeal of Department Action by Mr. William W. Bloom

Presenter: Richard Rico, Assistant Director, Special Services Division

(For additional background information, see minutes for the October 19, 2001 Commission meeting, page 24.)

Mr. Rico stated Mr. Bloom requested a continuance until the January 2002 meeting when he could be present with his counsel, David Burnell Smith. Mr. Smith would not be available today. The Department had no problem with him making his case to the Commission.

The Department notified Mr. Bloom of today's meeting, but it was his responsibility to inform counsel.

Mr. Bloom stated if the Commission decided not to continue his case, he could be present if the Commission took a break long enough to allow him time to get to the meeting.

Mr. Odenkirk stated this case had a number of potential problems and to not honor Mr. Bloom's request to continue would compound the problem. He was entitled to be represented by counsel in this matter. It was important for him to exercise his full due process rights.

Motion: Carter moved and Golightly seconded THAT THE COMMISSION VOTE TO GRANT MR. BLOOM'S REQUEST TO CONTINUE.

Vote: Golightly, Carter and Chilton – Aye
Chair voted Aye
Gilstrap – Abstained
Motion passed

* * * * *

18. Call to the Public

There were no comments.

* * * * *

19. "Meet the Commission" Annual Awards Selection

Presenter: Steve Ferrell, Deputy Director

The Commission made selections in a number of categories for the annual "Meet the Commission" awards banquet to be held January 19, 2002. An updated packet of the nominations was distributed to the Commission.

Motion: Manning moved and Chilton seconded THAT DANIEL JAMES LASLER BE NOMINATED AS YOUTH ENVIRONMENTALIST OF THE YEAR.

Vote: Unanimous

Commissioner Chilton noted that the Sportsman/Landowner-Lessee Relations Committee vote for Habitat Steward of the Year resulted in a tie for the Kings and the Murphys.

Motion: Chilton moved and Carter seconded THAT THE KINGS AND THE MURPHYS RECEIVE THE HABITAT STEWARDS OF THE YEAR AWARD.

Vote: Unanimous

Motion: Golightly moved and Chilton seconded THAT WHITE MOUNTAIN RADIO RECEIVE THE MEDIA OF THE YEAR AWARD AND THE OTHER NOMINEE BE SET AND MOVED INTO THE AWARD OF EXCELLENCE CATEGORY.

Vote: Unanimous

Chairman Manning noted the Arizona Sportsman's Journal would be moved and considered under the Award of Excellence.

Motion: Chilton moved and Carter seconded THAT TODD RATHNER BE SELECTED FOR CONSERVATIONIST OF THE YEAR AND DURWOOD GLEN REED BE LISTED FOR AN AWARD OF EXCELLENCE.

Vote: Unanimous

Motion: Manning moved and Carter seconded THAT THE OUTDOOR WRITER OF THE YEAR AWARD GO TO DALE HAJEK.

Vote: Unanimous

Motion: Manning moved and Carter seconded THAT BRIAN DOLAN BE NOMINATED FOR VOLUNTEER OF THE YEAR.

Vote: Unanimous

Motion: Carter moved and Manning seconded THAT BUCK APPLEBY BE CONSIDERED FOR AN AWARD OF EXCELLENCE.

Vote: Unanimous

Motion: Chilton moved and Carter seconded THAT DAVE MATTOUS BE SELECTED AS ENVIRONMENTALIST OF THE YEAR.

Vote: Carter and Chilton – Aye
Golightly and Gilstrap – Nay
Chair voted Nay
Motion failed

Motion: Manning moved and Golightly seconded THAT ENVIRONMENTALIST OF THE YEAR AWARD GO TO PHIL SMITH.

Vote: Unanimous

Motion: Golightly moved THAT TROUT UNLIMITED BE NOMINATED FOR CONSERVATION ORGANIZATION OF THE YEAR.

The motion failed for lack of a second. Commissioner Gilstrap suggested splitting a fish conservation organization and big game conservation organization so that there would be one each under the broad category of Conservation Organization Award.

Commissioner Golightly withdrew his motion.

Motion: Gilstrap moved and Golightly seconded THAT THE OLD PUEBLO CHAPTER OF TROUT UNLIMITED AND THE ARIZONA MULE DEER ASSOCIATION BE NAMED AS CONSERVATION ORGANIZATIONS OF THE YEAR.

Vote: Golightly, Chilton and Gilstrap – Aye
Carter – Nay
Chair voted Nay
Motion passed 3 to 2

Motion: Manning moved that an AWARD OF EXCELLENCE GO THE YUMA VALLEY ROD AND GUN CLUB.

The motion failed for lack of a second.

Those being considered for Awards of Excellence were Buck Appleby, Durwood Glen Reid and Arizona Sportsman's Journal.

Motion: Chilton moved and Carter seconded THAT AN AWARD OF EXCELLENCE GO TO JUDGE ROCKY MANUZ.

Vote: Unanimous

Motion: Golightly moved and Gilstrap seconded THAT THE ARIZONA SPORTSMAN'S JOURNAL BE INCLUDED IN THE AWARD OF EXCELLENCE.

Vote: Golightly and Gilstrap – Aye
Carter – Nay
Chilton – Abstain
Chair voted Nay
Motion failed

Motion: Manning moved and Carter seconded THAT THE JUNIOR ARIZONA MULE DEER ASSOCIATION BE GIVEN AN AWARD OF EXCELLENCE.

Vote: Unanimous

Motion: Chilton moved and Manning seconded THAT AN AWARD OF EXCELLENCE GO TO DURWOOD GLEN REED.

Vote: Unanimous

Motion: Manning moved and Chilton seconded THAT DEPUTY COUNTY ATTORNEY CHARLES W. STODDARD III BE NOMINATED FOR AN AWARD OF EXCELLENCE.

Vote: Golightly, Carter and Chilton – Aye
Gilstrap – Abstain
Chair voted Aye
Motion passed

Motion: Gilstrap moved and Manning seconded THAT LINDA SEARLES BE NOMINATED FOR AN AWARD OF EXCELLENCE.

Vote: Unanimous

Motion: Manning moved and Carter seconded THAT THE CHANDLER ROD AND GUN CLUB RECEIVE AN AWARD OF EXCELLENCE

Vote: Carter and Chilton – Aye
Golightly and Gilstrap – Nay
Chair voted Aye
Motion passed 3 to 2

Motion: Carter moved and Chilton seconded THAT NOMINATIONS BE CLOSED.

Vote: Unanimous

Mr. Ferrell recapped the awards:

Awards of Excellence (6):	Junior Arizona Mule Deer Association Linda Searles Justice of the Peace Rocky Manuz Deputy County Attorney Charles W. Stoddard III Durwood Glen Reed Chandler Rod and Gun Club
Volunteer:	Brian Dolan
Youth Environmentalist:	Daniel Lasler
Outdoor Writer:	Dale Hajek
Media:	White Mountain Radio
Conservation Organization:	Old Pueblo Chapter of Trout Unlimited Arizona Mule Deer Association
Conservationist:	Todd Rathner
Environmentalist:	Phil Smith
Habitat Steward (2)	Pat and John King Joan and John Murphy

Discussion occurred regarding the arrangement of the Saturday afternoon program. Commissioner Carter stated he would like the Chair to take the lead in opening the program by presenting highlights, hot topics of the year and achievements. Commissioner Gilstrap stated that audio-visual equipment should be used to assist in the annual report process. Chairman Manning noted Wes Keyes of the Audio-Visual Branch

already prepared three videos that will be shown on Saturday. Mr. Keyes briefly described the contents of the videos. The videos would be previewed before Saturday's function.

Direction from the Commission regarding "Meet the Commission" is that the Chair would open with 2001 highlights and part of that would include three videos as long as the Commission has previewed them, with a public comment period following.

* * * * *

Meeting recessed 3:25 p.m.

Meeting reconvened 3:35 p.m.

* * * * *

Commissioner Carter noted he would not be in attendance at tomorrow's meeting due to personal reasons.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION RETURN INTO EXECUTIVE SESSION.

Vote: Unanimous

* * * * *

Meeting recessed 3:35 p.m.

Meeting reconvened 4:12 p.m.

* * * * *

Motion: Gilstrap moved and Carter seconded THAT THE MEETING ADJOURN.

Vote: Unanimous

* * * * *

Meeting adjourned 4:12 p.m.

* * * * *

Saturday, December 8, 2001 – 8:00 a.m.

Chairman Manning called the meeting to order at 8:00 a.m. Members of the Director's staff were introduced. Commissioner Carter was not at today's meeting. The meeting followed an agenda dated November 9, 2001.

* * * * *

Awards and Commissioning of Officers

Three wildlife managers who completed Department training were commissioned. They were: Dan Caputo, Rick Peebles and Luke Thompson.

Director Shroufe presented the 2000 Partners in Flight Award to Margie Latta. The national Partners in Flight Award is presented in recognition of exceptional contributions to the field of neotropical migratory bird conservation.

Director Shroufe also noted that Terry Johnson received a Special Recognition award from the International Association of Fish and Wildlife Agencies (IAFWA) for his outstanding dedication in advancing the state fish and wildlife conservation agenda on two issues: 1) State Conservation Agreements and 2) assisting nationally in expediting the funding for the Wildlife Conservation Restoration Program.

Chairman Manning recognized an award presented to Director Shroufe at the IAFWA meeting this past week in Kansas – the Seth Gordon Award. The plaque was not available but what was written on it was described. This is the IAFWA's highest honor and is conferred on administrators who work steadfastly and effectively for the best use of North American natural resources in the public trust and for contributions to the programs of the International. The award was established originally to bestow a richly deserved honor upon Seth Gordon for his 50 years of service to the International. He was the epitome of the enlightened able and progressive natural resource administrator who had the ability to see beyond the limits of one state to the international need. This award is conferred annually to recognize in other individuals the qualities so well represented by Seth Gordon. The plaque reads:

Seth Gordon Award – Duane L. Shroufe for dedication and leadership in fish and wildlife management and for contributions to his profession and to the Association – the International Association of Fish and Wildlife Agencies

* * * * *

1. Presentation on Collaborative Efforts to Develop a State Conservation Agreements Program for Proactive Conservation

Presenter: Terry Johnson, Nongame Branch Chief

(For additional background information, see minutes for the June 22, 2001 Commission meeting, pages 11-13.)

An informational publication on State Conservation Agreements was distributed to the Commission.

Since the June 22, 2001, Commission meeting, the cooperators published a final synthetic digest summarizing the discussions and outcomes of State Conservation Agreement (SCA) workshops. The outcomes included recommended guidelines for SCAs. At the IAFWA meeting this past week, a SCA Program was approved.

The SCA concept was intended to complement existing tools under the Endangered Species Act (ESA): Safe Harbor Agreements (SHAs), Habitat Conservation Plans (HCPs) (these both apply to listed species) and HCPs can also be used for unlisted species; Candidate Conservation Agreements (CCAs) and Candidate Conservation Agreements with Assurances (CCAAs), can be used for unlisted species whether or not they are true candidates under the ESA.

One of the major concerns that the committee faced was that every time a CCA was developed or an unlisted species was added to a HCP, it invited a listing action.

The SCAs were developed to find a way around that problem. Identifying a species as a focal point for a SCA is intended to bring all resources together to begin the conservation effort without identifying it as a candidate for federal listing. The Threatened and Endangered Species Policy Committee endorsed the concept unanimously and the directors in the business meeting of the IAFWA moved the concept unanimously.

Guidelines were depicted in the distributed document on pages 29-32. The HCPs are strong on technical content and identify what needs to be in the agreement from a regulatory perspective to meet the obligations of the U.S. Fish and Wildlife Service (FWS) under the ESA.

The document and the SCA concept is not regulatory structured but is focused on the manner in which people are brought together to work together to accomplish things together. It is process oriented. It depicts ways in which people want to be treated and involved to try to help agencies develop and implement plans and accomplish conservation objectives in local areas with their participation at all desired levels of involvement.

The Committee will maintain its SCA work group so assistance can be provided to states that are entering into these agreements. The conservation community is interested in this program, but it remains to be seen whether or not substantive conservation can be accomplished.

This is a process that is untested; there are no SCAs in effect. These kinds of partnerships have been done for a number of years, but not in a formal sense. The CCAAs cannot apply to federal lands or leased federal lands. Federal agencies cannot provide assurances under the CCA program. This is an opportunity to bring out those same concepts of assurances and build them into state agreements that can apply to those lands to meet the needs of private property owners at the same time conservation needs are met in the state wildlife agencies.

Chairman Manning asked who approves SCAs and did they require review by the FWS. Mr. Johnson stated the SCAs are approved by the parties that are signatory to the agreement. A level of conservation adequacy was attempted to be established in this process that would be sufficient to preclude the need to list species in some cases. It would be advantageous to have the FWS as a reviewer, and it may be a signatory, but the FWS does not have final agreement approval in this concept.

Commissioner Chilton wanted to see opportunities created for voluntary private cooperation to achieve the goals of preserving natural heritage. We need to insure all affected parties are properly represented and that agreements are used to further goals of preserving heritage, but are in no way designed to be used by other parties to deprive rural residents of their opportunities to preserve their lifestyles. Tools should be provided to help rural residents preserve their communities and lifestyles.

* * * * *

2. Presentations of the Draft Arizona Game and Fish Department Guidelines and Recommendations for the 2002-2003 Hunting Seasons for Commission Approval

Presenter: Tice Supplee, Game Branch Chief

The public review draft of the Department's Guidelines and Recommendations for the 2002-2003 Hunting Seasons was presented to the Commission for any additions or corrections prior to being presented to the public.

Ms. Supplee noted that the Region 1 early bull elk hunt rotations were missing in the document today but would be corrected before it goes out for public review. The rotation cycle was noted for Regions 2 and 6.

Ms. Supplee noted that this year's hunt information was just getting back to the Game Branch. The elk information had not been tabulated to date.

Ms. Supplee noted a significant change in Region 2 for the deer hunt. It recommended that archery only deer hunts be permitted on the North Kaibab and the Arizona Strip. The proposed change would require a permitted season for August 30-September 8 for Units 12A/12B, Unit 13A and Unit 13B. Another season would be from October 19-25 in Unit 12A for any deer.

Commissioner Golightly asked if the any deer hunt in Unit 12A would be permitted. He thought there was a tight schedule for taking does north of the Colorado River. He asked about the biological effect on the doe population if it was opened to archery. Ms. Supplee stated the hunt would be permitted for archery and the archers would be able to harvest does successfully. Biologists currently figure in the archery harvest as a biologically contributing factor when they compile the package for that area. Permitting the hunt would give more accurate information. Once the data was obtained for one year, there would be a better idea of what was taken to better balance and adjust the permitted gun hunts. Commissioner Golightly wanted the Department to consider or project the potential archery doe harvest and adjust the doe permits for gun hunters based on that projection.

Ms. Supplee noted this hunt has had adjusted season dates for a number of years. Currently, there were about 2500-3000 archery hunters in the area. This was a recommendation to manage the numbers of people; the Department was getting into a harvest opportunity allocation with the recommendation. People selecting these archery hunts would be foregoing rifle hunts because they would be in the draw. What was unknown was the number of archers in Arizona that would pick one of these four hunts over an opportunity to be a rifle deer hunter. She believed the Region may recommend a total of 2000 permits; these permits may not go in the draw and may become available over the counter. If the permits go over the counter, they would be counted as a permit unless the bag limit was changed and it went to a multiple deer bag limit as was done a few years ago. There would still be over-the-counter deer tags for the rest of the state and archers could get one of those. The recommended bag limit would still be one deer per calendar year.

Two things will occur with permitting the Kaibab archery hunts. Archers will pay the Kaibab fee and the nonresident cap will be effective. A percentage of hunters in this area was coming from out-of-state, so this will cap that at 10%. The cap would be waived if the permits go over the counter.

Commissioner Golightly asked when the \$5 Kaibab fee would increase. Ms. Supplee stated that was in rule (Article 1) and the Commission had deferred that decision until the normal rule cycle.

Unit 13B has not been opened to archery only in a long time and it would be a limited permit opportunity. It will be recommended to drop the December portion of the archery deer hunt in Unit 27 and that unit will retain a late season archery deer hunt in January only. Unit 16A would be opened to archers. The archery only deer hunt in Unit 20B would be changed from the split in the first part being any antlered deer and the second part to any deer for the whole season to be any antlered deer; the doe hunt component would be dropped in that unit.

Ms. Supplee noted biologists were monitoring the status of the winter range on the west side of the Kaibab. Their findings would definitely have a big influence on the permit numbers in that area.

There were no significant changes in antelope except changing season dates in Unit 21.

With regard to elk, Ms. Supplee noted the Regions have been working with the Habitat Partnership Committees and other partners and developed the elk maps that were a result of the Elk Team Report. These maps designate the standard elk management, limited and seasonal winter range areas. These maps would be taken to all of the public hunt meetings to continue to receive input on these boundaries. Scaled-down copies of these maps would be sent to the Commission. Unit 15A would be added to the multiple unit archery only elk season for antlerless and any elk next year.

No changes were recommended for the fall turkey season except to open Unit 7. The spring turkey season would be split for those units with a stratified (2 hunt) structure. The first season will have an April 25-May 1 date; the second season will have a May 2-8 date. The hunters for both of these may return from May 9-June 1. This would provide more flexibility to turkey hunters. If there was a total weather event in the first hunt, it is possible those hunters would defer the opener to the second season; however, if they do that, they will be letting in another group of hunters first. The Commission would be informed of the public's input.

Regarding elk, Chairman Manning stated there was the possibility of closing the Alpine valley to centerfire and muzzleloader elk hunting. Ms. Supplee stated there were a lot of closures related to suburban development and there is a general note in all hunt Orders that advises hunters to be aware of local ordinances. The Department could do a special mailing to notify permitted hunters in certain areas.

Commissioner Golightly wanted to know of the public's input with regard to an elk season in Unit 7M. The elk population was growing and the archers were not taking the elk out of that unit. Ms. Supplee pointed out that the Department would have to find out how much of Unit 7M was outside the incorporated boundaries of Flagstaff. Commissioner Golightly stated he wanted the Department to look into a muzzleloader or general season hunting opportunity in Unit 7M-West that was outside the city limits.

Ms. Supplee noted there would be no changes in javelina and bighorn sheep except for normal rotations. The recommendation for bear was to open a season in Unit 9.

Commissioner Chilton stated she received phone calls from people asking the Department to look into the management of some of the areas where the buffalo were. It was felt House Rock buffalo were moving onto federal lands and were not on lands where they can be hunted. Ms. Supplee stated there was a free-ranging buffalo herd at House Rock. The hunt Order opens all management areas, not just the wildlife area. The buffalo can move on to the top of the Kaibab Plateau, either on national forest land, which is huntable, or National Park Service (NPS) lands, which is not huntable. It was estimated that about half of the population was in the Park this year; the other half were on huntable lands. The NPS does not want buffalo on its lands. This calls for fencing. There is a special buffalo management team that the Region put together and they have been meeting and discussing these issues. Commissioner Golightly did not want to use Department funds to fence out buffalo.

No changes were recommended for quail.

Chairman Manning asked how the heightened bear bag limit went in Unit 27. Ms. Supplee noted the harvest objective was met in the first hunt and by changing the season, it allowed the hunt to be opened again to give deer hunters an opportunity. That season was still open.

No changes were recommended for the prairie dog season. Pheasant hunts would continue in the Yuma valley.

Ms. Supplee noted the Department has been working with the various quail groups in the state. They are working with the Department to put out an agency questionnaire that will query quail hunters. The Arizona Quail Alliance received permission from the U.S. Forest Service to install boxes and to conduct their own independent questionnaire. The Department is cooperating with them and other quail groups to get names of Mearns' quail hunters in order to build a Mearns' quail hunter mail list.

Ron Engel-Wilson presented flush count survey information. The survey went well and five coveys were found on the nine routes. Birds were found in Gardner Canyon. Hunters are finding Mearns' quail everywhere.

No changes were recommended for either chukar partridge or blue grouse.

Public comments

Garth Goodrich, representing self, spoke with regard to the archery draw on the Kaibab. There were ways of being able to manage the numbers of people by putting restrictions on the hunters. Restrictions are needed on bowhunters but there were alternatives besides a draw. He also thought there should be bonus points for turkey since there were now tags for the sought-after Gould's turkey.

Glenn Sheldon, representing self, asked why the Kaibab archery hunts were being permitted. Ms. Supplee stated the Region felt that the archery harvest of 300 deer a year

was significant enough and with the reductions in the rifle permits to achieve the quality management objectives, the added tool of permitting was needed to manage for the archery cohort. This moves you into the social piece, which is the allocation of opportunity across the methods. Mr. Sheldon thought that going into a permitted system for archers at this point was over zealous and there were other ways to reduce the number of people in the unit. He suggested having mandatory hunter education for nonresidents or mandatory return of survey cards, or point restrictions on bucks to get more information before going to a draw for permits.

Regarding the legality aspect of requiring nonresidents to take the Arizona hunter education course prior to hunting, Mr. Adkins stated it would raise questions with regard to the U.S. Constitution. He would have to look into the matter because it was very complicated and was related to the nonresident permit litigation that was still ongoing. Mr. Odenkirk stated if Arizona required nonresident hunters to come to Arizona to take the hunter education course, every state would then require every nonresident to come to its state and pass the hunter education course.

Mr. Sheldon stated he wanted to see a point restriction on the North Kaibab.

Lonnie Shields, representing the Arizona Bowhunters Association (ABA), supported the Department on the draw for the North Kaibab archery deer permits. An over-the-counter permit system would be more adjustable than a draw. If this went to a draw system, it would eliminate all archers' opportunities that were drawn in that area to apply for firearm hunts. He was concerned with this because a lot of archers will not shoot a deer because they know later there would be a rifle tag. This would cause the success rate to go up in Unit 12A/B. In reference to the Unit 6A elk hunt, one of the things that was of concern was that during the first elk hunt, the second elk hunters were coming up and disrupting the first elk hunters. He thought there should be a week's gap between the two hunts if the hunts were to continue so that the second group would not impact the first group as much. He also thought archers could take care of some of the elk problems in Unit 7M.

Ms. Supplee noted that part of the rules package moving at present includes R12-4-309 dealing with restricted hunts. Should that certify, it would be reflected in the next hunt cycle. This would remove a lot of constraints in moving archery elk hunts around because they would not automatically close other hunts. However, if Mr. Shields' recommendation was considered to create separation between elk hunt archers, one or both of those hunts might be sharing space with another permitted hunt for another species or another open season, like squirrel or turkey.

After the Commission approved the guidelines, copies will be distributed to over 800 individuals through direct mailings and distribution at public meetings, which will be scheduled in late January-early February in 10 or more locations statewide. Public comment will be accepted in writing until March 4, 2002.

Motion: Chilton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE DRAFT ARIZONA GAME AND FISH DEPARTMENT GUIDELINES FOR THE 2002-2003 HUNTING SEASONS WITH THE CORRECTION OF ADDING THE ROTATION FOR ELK IN REGION 1.

Ms. Supplee noted that the two things she was walking away with explicitly from the Commission was 1) to analyze the expected archery antlerless harvest and adjust permits for the archery and firearms side in anticipation of total doe harvest and 2) query the public about allowing muzzleloader hunts in Unit 7M.

Vote: Golightly, Chilton and Gilstrap – Aye
Carter – Absent
Chair voted Aye

* * * * *

3. Call to the Public

There were no comments.

* * * * *

4. Request to Approve the Notice of Proposed Rulemaking and the Preliminary Economic, Small Business, and Consumer Impact Statements for R12-4-701, R12-4-703, R12-4-705, R12-4-706, R12-4-708, R12-4-709, R12-4-711, and R12-4-712

Presenter: Mark Naugle, Rules and Risk Manager

(For additional background information, see minutes for the March 24, 2001, Commission meeting, page 23.)

If approved by the Commission, the Notice of Proposed Rulemaking and the preliminary Economic, Small Business and Consumer Impact Statements will be filed with the Secretary of State by December 14, 2001, for publication in the *Arizona Administrative Register* on January 4, 2002. Written public comments will be accepted until February 4, 2001, and the Notice of Final Rulemaking will be presented to the Commission for final action at its March 2002 Commission meeting. The final rulemaking package will then be submitted to GRRC for the June 4, 2002, Council meeting, with an anticipated effective date for the rule amendments of July 1, 2002.

Motion: Golightly moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE NOTICE OF PROPOSED RULEMAKING AND THE PRELIMINARY ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENTS FOR R12-4-701, R12-4-702, R12-4-703, R12-4-705, R12-4-706, R12-4-708, R12-4-709, R12-4-711, AND R12-4-712 FOR FILING WITH THE SECRETARY OF STATE.

Vote: Golightly, Chilton and Gilstrap – Aye
Carter – Absent
Chair voted Aye

* * * * *

5. Request to Adopt the 2001 Article 6 Five Year Rules Review Report for Filing with the Governor's Regulatory Review Council

Presenter: Mark Naugle, Rules and Risk Manager

This report must be filed with the Governor's Regulatory Review Council by January 22, 2002, for the March 5, 2002, Council meeting. The Department anticipates opening a Rulemaking Docket for the proposed rule changes to Article 6 by June 2002. The anticipated effective date for the rule amendments will be January 1, 2004 (with the exception of R12-4-609, which is a part of the Elk Harvest Management Strategy rulemaking package, anticipated effective date in February 2003).

Motion: Gilstrap moved and Golightly seconded THAT THE COMMISSION VOTE TO ADOPT THE 2001 ARTICLE 6 FIVE-YEAR RULES REVIEW REPORT FOR FILING WITH THE GOVERNOR'S REGULATORY REVIEW COUNCIL PURSUANT TO ARS 41-1056.

Vote: Golightly, Chilton and Gilstrap – Aye
Carter – Absent
Chair voted Aye

* * * * *

6. Request to Adopt Article 3 Five-Year Rules Review Report for Filing with the Governor's Regulatory Review Council

Presenter: Mark Naugle, Rules and Risk Manager

This report must be filed with the Governor's Regulatory Review Council by January 22, 2002, for the March 5, 2002, Council meeting. The Department anticipates opening a Rulemaking Docket for the proposed rule changes to Article 3 by June 2002. The anticipated effective date for the rule amendments will be January 1, 2004.

Motion: Gilstrap moved and Golightly seconded THAT THE COMMISSION VOTE TO ADOPT THE 2001 ARTICLE 3 FIVE-YEAR RULES REVIEW REPORT FOR FILING WITH THE GOVERNOR'S REGULATORY REVIEW COUNCIL PURSUANT TO ARS 41-1056.

Vote: Golightly, Chilton and Gilstrap – Aye
Carter – Absent
Chair voted Aye

* * * * *

7. A Briefing on the Possible Future Establishment of a Night-Hunting, Limited-Weapon, Shotgun Shooting Shot Season

Presenter: Mark Naugle, Rules and Risk Manager

As part of the Article 3 five-year rules review process, the Five-year Rules Review Team evaluated input from the Yuma Valley Rod and Gun Club (YVRGC) suggesting rule changes to allow for night predator calling and hunting in area of the state where depredation has been a problem. The Game Branch received this input at the January 2001 hunt guidelines public meeting in Yuma.

The Game Branch provided the team with benchmark data from 17 western states on night hunting regulations and restrictions. Except for New Mexico, the other states allow for various forms of restricted night hunting opportunities with the aid of an artificial light for predatory and/or furbearing mammals.

The Rules Review Team analyzed this information and developed a conceptual version of how such a hunt would be structured. To allow maximum flexibility, potential rule changes would be made to both R12-4-304 (Lawful methods for taking wild mammals, birds and reptiles) and R12-4-318 (Seasons for lawfully taking wild mammals, birds and reptiles). This would allow the Commission to establish an Order to open and close seasons on a case-by-case basis or unit-by-unit basis. During years when it may be necessary, the Commission would have the latitude to consider alternative strategy management tools of hunt duration time frames up to, and including, a 365-day season.

This proposal has the potential to be highly controversial and may have a polarizing effect on the same sportsmen and opposing public citizen groups who participated in the public debate over the hunt contest rules. For this reason, the Department was not recommending incorporation of the night predator hunting issue into either the 2001 Five-year Rules Review Report or the subsequent 2002 regular rulemaking processes involving Article 3. This approach would allow the Department to provide a comprehensive separate process for public review and input on the specific issue of night hunting. Placing this issue on a separate rulemaking docket would prevent potential problems from impeding or jeopardizing the already established timetable and projected effective date for the remainder of the proposed Article 3 rule changes.

Public comment

Joe Melton, representing self and a former trapper, stated the limited weapon shotgun was discussed in length at a meeting, but using a centerfire weapon was never mentioned. In some of the areas of the state, it is so open that there might be a restriction limitation to a 22 centerfire rifle or less. Another important issue was that season dates needed to be during the prime time for fur. Coyotes are worth money at the present time, and people will go get them if there was an incentive. He liked the idea of permits and did not object to some type of special fee.

Commissioner Chilton stated focus should be on antelope fawning and using good science to manage predators. Decisions should be based on the goal of preserving the pronghorn population.

Mr. Naugle stated initially the proposal was for shotgun, but with Mr. Melton's statement, there may be some public interest and debate on centerfire. Commissioner Golightly was concerned about an enforcement time restriction north of the Colorado River. If guns were shot in the middle of winter there, there would be problems. Mr. Engel-Wilson, Small Game Supervisor, stated he helped draft the regulation. The season would be by permit so it could be temporally time specific, number of individuals

specific and location specific. There would be good control over the hunt. Mr. Naugle stated this concept would be brought to the public for discussion.

Director Shroufe stated the Commission had the flexibility during hunt Order sets to prescribe a season, length of time, dates and location if it wanted to. At present, the Commission did not have the authority to prescribe night predator hunts. If the Commission wanted to have authority during an Order setting meeting to do so, this rule would allow it to occur.

Mr. Naugle stated that the direction was for the Department to return to the Commission at its February 2002 meeting to seek direction on this potential rulemaking package. If the Commission directs the Department to move forward with the process in February 2002, the Department will then schedule and conduct a series of statewide public meetings to solicit input on the idea of night hunting for predators and furbearing wildlife. At the conclusion of the public input process, the Department will provide the Commission with a briefing and summary of public comments, with an anticipated date of May 2002. The Commission would be asked to give the Department further direction on this issue at that time, including the following: direction to move forward with the opening of the rulemaking docket, direction to collect additional public input or direction to terminate the proposal.

Mr. Naugle stated that between now and February 2002, the Department would be doing further research on the issue.

Jay Nistetter, representing Phoenix Varmint Callers, asked what the annual harvest for predatory animals, mainly coyotes, would be. He wanted to know the Department's estimate for how many numbers were actually taken. Night hunting could be a valuable management tool. He wanted to see the Commission pursue this for managing predatory animals. If night hunting was allowed, he wanted to see a mandatory course or education training in order for people to participate in this type of hunt. Some of the varmint calling clubs in the state could come up with an approved course in conjunction with the Department to teach people do's and don'ts in night hunting. By doing so, this would be better accepted by the public at large. He did not see this training as a constitutional issue, but a requirement in order to hunt. If approached right, this could help ranchers and wildlife on the Kaibab, Anderson Mesa, and other areas.

Motion: Manning moved and Chilton seconded THAT THE COMMISSION MOVE THE DEPARTMENT RECOMMENDATION REGARDING THE FORWARDING OF THIS ISSUE.

Vote: Chilton and Gilstrap – Aye
Golightly - Nay
Carter – Absent
Chair voted Aye
Motion passed 3 to 1

* * * * *

8. Call to the Public

Lonnie Shields, representing the Arizona Bowhunters Association, supported the Commission in its decision to assist people who were unable to go hunting and try to fill their permits because of the September 11 terrorist attacks, and to try to give them a change to go on their hunts in the future. This is a one-time type of thing due to this type of circumstance.

Joe Melton, representing a constituent in Yuma, stated the person had a permit to go hunting on the Navajo Depot but all of the hunts were cancelled because of September 11. The person was not worrying about that, but he was concerned about losing his bonus points. If he ever received a permit, he thought there should be special recognition for those who had a permit this year but could not hunt because of the base closure.

* * * * *

7. A Briefing on the Possible Future Establishment of a Night-Hunting, Limited-Weapon, Shotgun Shooting Shot Season – cont'd.

Commissioner Golightly changed his vote on this item from Nay to Aye for the record.

* * * * *

9. Future Agenda Items

Commissioner Chilton stated she heard from a constituent who was concerned about the harm to pronghorn habitat by a proposed effort by a developer to change the utilization of three sections of state land near the south fork of the Little Colorado from the present open use to a commercial use. Information needed to be gathered and she asked for a presentation at the next Commission meeting.

Also on the agenda for January will be the status of access in southeastern Arizona, i.e., High Lonesome Road.

Director Shroufe noted the Department would be bringing to the Commission the issue of how and when the permits would be handled that were available but people could not partake in the hunts this fall because of September 11. The January open house would be on Wednesday. This issue should be taken up separately from the Friday Commission meeting since it would be a longer issue. He suggested having a meeting on this item either Wednesday or Thursday afternoon. The schedule was further discussed. It was decided to hold a meeting regarding this issue on Wednesday, January 16, 2:00-6:00 p.m.

* * * * *

Motion: Gilstrap moved and Chilton seconded THAT THE MEETING ADJOURN.

Vote: Unanimous

* * * * *

Meeting adjourned 10:30 p.m.

* * * * *